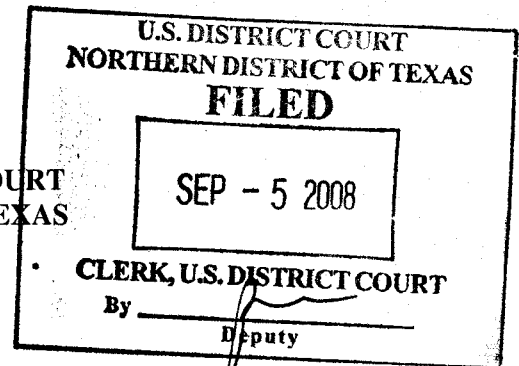


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



UNITED STATES OF AMERICA

VS.

DERRICK JOHNSON,
Defendant.

§
§
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§
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§

NO. 3:07-CR-0257-B

NO. 3:08-CV-0787-B

ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:

IFP STATUS:

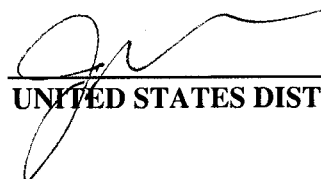
- (X) the party appealing is GRANTED *in forma pauperis* status on appeal.
() the party appealing is proceeding *in forma pauperis*.
() the party appealing is DENIED *in forma pauperis* status on appeal
for the following reasons:

- () the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on _____. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)).
- () the person appealing is not a pauper;
- () the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on _____).

COA:

- () a Certificate of Appealability is GRANTED on the following issues: _____
- (X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation filed in this case on May 12, 2008 in support of its finding that reasonable jurists could not conclude that petitioner's application for federal habeas relief under 28 U.S.C. § 2255, which was filed while his direct appeal was pending, was improperly dismissed without prejudice. *See Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 1602, 146 L. Ed. 2d 542 (2000); *Jones v. United States*, 453 F.2d 351, 352 (5th Cir. 1972) (district court may not adjudicate the merits of a 28 U.S.C. § 2255 motion if direct appeal of underlying criminal case is pending).

SIGNED this 5th day of Sept, 2008.


UNITED STATES DISTRICT JUDGE